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Lloyd W. Sadler
Parsons Behle & Latimer
Suite 1800
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AUG 19 2004

OFFICE OF PETITIONS

In re Application of	:	
McClesky et al.	:	DECISION REFUSING STATUS
Application No. 10/672,644	:	UNDER 37 CFR 1.47(a)
Filed: September 27, 2003	:	
Attorney Docket No. 4472 P	:	
Title: Method and System For Downloading	:	
Digital Content Over A Network	:	

This is in response to the petition under 37 CFR § 1.47(a), filed June 18, 2004.

The petition under 37 CFR. § 1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR. § 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR. §1.136(a).

The above-identified application was filed on September 27, 2003, without an executed oath or declaration. Accordingly, on December 19, 2003, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring for the purposes of this decision an executed oath or declaration in compliance with § 1.63, and a surcharge for its late filing. This Notice set an extendable two-month period for reply of February 19, 2004.

In reply, applicant filed a petition, the surcharge for late filing of the declaration, and a partially executed declaration. To make the reply timely, a four (4) month extension of time was also submitted.

A grantable petition under 37 CFR. § 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The instant petition does not satisfy requirements (2) and (4).

As to item (2) the declaration executed by Inventor McClesky contains non-dated/non-initialed alterations to the declaration. The serial number and the date filed in the heading of the declaration have been altered without having been initialed and dated. A newly executed declaration without alterations must be submitted.

As to item (4), a last known address for inventor O'Kane was provided in the petition, however a different address for inventor O'Kane has been provided on the declaration. Rule 47 applicant needs to indicate at which address inventor O'Kane can be reached. The inventor's most recent home address must be given to enable the Office to communicate directly with the inventor as necessary. See MPEP 605.03. If inventor O'Kane can be reached at the Florida address, the newly executed declaration should reflect the Florida address.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
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By facsimile: (703) 872-9306

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Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251 until September 24, 2004, thereafter (571) 272-3215.

Charlema R. Grant
Petitions Attorney
Office of Petitions